



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment

August 10, 2015

Mr. Nick Patel
Naman Hotels
P.O. Box 4540
Florence, SC 29502

Re: VCC 15-6339-NRP, Barnett Oil Company Site
Richland County

Dear Mr. Patel:

Enclosed please find proposed Voluntary Cleanup Contract 15-6339-NRP. This contract contains the terms we negotiated. Please review this document and if acceptable, sign and date the contract, and return it to my attention. If you are unable to sign the document as written, please contact me so that we can discuss the matter further.

Upon your execution of this contract, it will be public noticed for 30 days. Following the public notice period and assuming there are no adverse comments that would cause the Department not to execute the contract, the Department will sign it and forward a true and certified copy to you

Thank you for your interest in South Carolina's Voluntary Cleanup Program. If you have questions or if I can be of further assistance, please call me at (803)898-0932.

Sincerely,

Alex Fulmer, P.E.
Brownfields/Voluntary Cleanup Program
Division of Site Assessment, Remediation, and Revitalization
Bureau of Land & Waste Management

Attachments: Voluntary Cleanup Contract 15-6339-NRP

cc: Harry Mathis, Columbia and Lancaster Area Director (via e-mail)
File # 58281

**VOLUNTARY CLEANUP CONTRACT
15-6339-NRP**

**IN THE MATTER OF
BARNETT OIL COMPANY, RICHLAND COUNTY
and
NAMAN GERVAIS, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Naman Gervais, LLC, with respect to the Property located at 410 Gervais Street and 411 Senate Street, Columbia, South Carolina. The Property includes approximately 2.3 acres identified by Tax Map Serial Numbers R08912-11-02 and R08912-11-04. In entering this Contract, the Department relies on the representations contained in the "Non Responsible Party Application for Voluntary Cleanup Contract" of April 22, 2015, and any amendments thereto, by Naman Gervais, LLC, which is incorporated into this Contract and attached as Appendix A.

AUTHORITY

This Contract is entered into pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710 et seq. (as amended); the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-10, et seq. (as amended), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq., the S.C. State Underground Petroleum Environmental Response Bank Act, S. C. Code Ann. § 44-2-10, et seq. (as amended), and the South Carolina Pollution Control Act, § 48-1-10 et seq.

DEFINITIONS

1. Unless otherwise expressly provided in this Contract, terms used herein shall have the meaning assigned to them pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §44-56-710 et seq. (as amended), and if not set forth

therein, shall have the meaning assigned to them pursuant to the South Carolina Hazardous Waste Management Act, S.C. Code Ann. § 44-56-10, et seq. (as amended), the S.C. Pollution Control Act, S.C. Code Ann. § 48-1-10, et seq. (as amended), or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq.

- A. "Naman" means Naman Gervais, LLC.
- B. "Beneficiaries" means Naman's Non-Responsible Party lenders, signatories, parents, subsidiaries, and successors, including new purchasers, lessees, and other parties acquiring an interest in any portion of the Property, but only to the extent that such parties have never been a Responsible Party at the Site.
- C. "Contamination" means the presence of a contaminant, pollutant, hazardous substance, petroleum, or petroleum product.
- D. "Contract" means this Voluntary Cleanup Contract.
- E. "Department" means the South Carolina Department of Health and Environmental Control, or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- F. "Existing Contamination" shall mean any Contamination present on, or under, the Site as of the execution date of this Contract.
- G. "Property" means the real property as described in the Non Responsible Party Application for Voluntary Cleanup Contract attached as Appendix A, and that is subject to the ownership, prospective ownership, or possessory or contractual interest of Naman or its Beneficiaries.

- H. "Segregated Sources" means drums, tanks, or similar discrete containers that potentially hold substances that may cause Contamination upon release to the environment.
- I. "Site" means all areas where a contaminant, petroleum, or petroleum product has been released, deposited, stored, disposed of, or placed or otherwise comes to be located; "Site" does not include any consumer product in consumer use or any vessel.
- J. "Waste Materials" means any Contamination-causing solid, semi-solid, or liquid material discarded, buried, or otherwise present on the Property, and may include sludge, slag, or solid waste materials such as empty containers and demolition debris or materials containing asbestos, lead-based paint, or petroleum or other contaminants.

FINDINGS

- 2. Based on the information known by or provided to the Department, the following findings are asserted for purposes of this Contract:
 - A. Owners and Operators: The owners and operators of the Property include the following:
Boyne J. Hennies, P. Hix Hennies, George A. 1929 to 1929
Hennies, Elizabeth H Wyse, Dorothy L. Hennies,
Caroline D. Hennies Steele, Jane Wyrick and Elenor
Dodge
Elizabeth A. Allwerden, Edward A. Allwerden, and 1929 to 1947
William A. Shand

W. L. Barnett	1947 to 1949
Nellie C. Barnett	1949 to 1974
Frank A. Barnett	1974 to 2004
Josephine B. Ligon and Mary Francis Wiles	2004 to 2005
Barnett Management Company, LLC	2005 to 2011
Josephine I. Sellers, et al	2011 to Present

- B. Property and Surrounding Areas: The Property is bounded generally by Gervais Street to the north with the former Klein Iron and Steel facility beyond, Huger Street to the east with commercial property beyond, Senate Street to the south with commercial property beyond, and Williams Street to the west with multi-family residential beyond.

The Property is generally T-shaped with the cap of the 'T' along Senate Street and a narrower base of the 'T' along Gervais Street. The Property was first developed as early as the 1930's. Historically the Property has been used as an automotive repair and tire facility, a used car sales facility, a construction company, a trailer sales/leasing yard, and Barnett Oil Company (Barnett) as a wholesale oil distribution facility. All structures that formerly occupied the Property were razed in the early 2000's. The Property is currently a vacant lot.

The Property is located in an area that has been densely developed for commercial use, light industrial use, and railway use since the 1930's. Two former underground storage tank (UST) facilities are located adjacent to the Property. To the southeast is the former Greyhound Bus facility (UST Permit #7503) which contained four UST's at one time. The tanks for this facility were removed in 1988 and received a no further action status (NFA) at the time of the tank removal.

To the north, and hydraulically upgradient of the Property is the former Gervais Street Texaco (UST Permit #7771). This facility contained seven UST's at one time and all tanks were removed in 1998. The most recent release from this

facility was identified in 2011 and was given an NFA status the same year.

C. Applicant Identification: Naman is a South Carolina limited liability company LLC, with its principal place of business located at 217 Dozier Boulevard, Suite 202, Florence, South Carolina. Naman affirms that it has the financial resources to conduct the response action pursuant to this Contract.

D. Proposed Redevelopment: Naman will acquire the Property and intends to redevelop the site with a hotel, restaurant, and office building.

BONA FIDE PROSPECTIVE PURCHASER STATUS

3. Naman certifies that it is not a current owner of the Property, or parent, successor or subsidiary of a current or past owner of the Property; is not a Responsible Party for the site, or a parent, successor or subsidiary of a Responsible Party for the site; and has not had any involvement with the Property in the past other than activities performed in anticipation of participation in the Voluntary Cleanup Program. Naman also certifies that it is eligible to be a Bona Fide Prospective Purchaser for the Property.

RESPONSE ACTION

4. Naman agrees to conduct the response actions specified in the sub-paragraphs below. An initial Work Plan shall be submitted by Naman, or its designee, within thirty (30) days after the date of execution of this Contract by the Department, or such earlier or later date if approved by the Department's project manager. A Report of the assessment results shall be submitted by Naman, or its designee in accordance with the schedule provided in the initial Work Plan. Naman acknowledges that the assessment may find distributions of Existing Contamination requiring additional assessment and/or corrective action on the Property that cannot be anticipated with this Contract. Naman agrees to perform the additional

assessment and/or corrective action consistent with the intended uses of the Property under the purview of this Contract; however, Naman may seek an amendment of this Contract to clarify its further responsibilities. Naman shall perform all actions required by this Contract, and any related actions of Naman's choosing not expressly required by this Contract, pursuant to Work Plans and/or Addenda approved by the Department.

A. Work Plan Logistics:

- 1). The Work Plan(s) shall set forth a schedule and methods for assessment and corrective action activities detailed herein.
- 2). The Work Plan(s) shall be submitted to the Department in the form of one hard copy and one electronic copy of the entire Work Plan on a compact disk (in .pdf format).
- 3). All activities undertaken pursuant to this Contract shall be consistent with S.C. statutes, regulations, and permitting requirements (e.g., stormwater management and waste disposal regulations). Naman shall identify and obtain the applicable permits before beginning any action.
- 4). The Work Plan(s) shall be in accordance with accepted industry standards and shall be signed and sealed by a Professional Engineer or Professional Geologist duly-licensed in South Carolina.
- 5). The Work Plan(s) shall provide detailed information about the proposed sampling points, collection methods, analytical methods, quality assurance procedures, and other pertinent details of the assessment and/or corrective measures activities consistent with the following:
 - a). Sample collection methodologies shall be consistent with the US EPA Region IV Field Branches Quality System and Technical Procedures.
 - b). All monitoring wells and groundwater sampling points shall be constructed in accordance with 25 S.C. Code Ann. Regs. R.61-71, the South Carolina Well Standards. The Work Plan shall provide sufficient detail to support

issuance of the well approvals by the Department.

- c). The laboratory analyses for samples taken pursuant to the Work Plan are specified in the media-specific sub-paragraphs below, but may include any of the following:
 - i. the full EPA Target Analyte List (TAL);
 - i). EPA Target Analyte List excluding cyanide (TAL-Metals);
 - ii. the full EPA Target Compound List (TCL);
 - i). EPA Target Compound List Volatile Organic Compounds (TCL-VOCs);
 - ii). EPA Target Compound List Semi-Volatile Organic Compounds (TCL-SVOCs);
 - iii). EPA Target Compound List Pesticides (TCL-Pesticides);
 - iv). EPA Target Compound List Polychlorinated Biphenyls (TCL-PCBs).
 - d). All analytical methods shall use appropriate detection levels to allow comparison to the media-specific screening criteria listed in the "EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites" in effect at the time of sampling. The applicable Protection of Groundwater SSL for soil samples shall be the "MCL-Based SSL", if listed. If the applicable screening criteria are lower than achievable detection levels, the analytical method shall use the lowest achievable detection levels.
- 6). The Work Plan shall include the names, addresses, and telephone numbers of Naman's consulting firm(s), analytical laboratories, and Naman's contact person for matters relating to this Contract and the Work Plan.
- a). The analytical laboratory shall possess applicable Certification defined in 25A S.C. Code Regs. R.61-81, for the test methods specified in the Work

Plan.

- b). Naman shall notify the Department in writing of any changes concerning the consulting firm(s), contact person(s), or laboratory identified in the Work Plan.
- 7). The Department will notify Naman in writing of approvals or deficiencies in the Work Plan.
- 8). Naman, or its designee, shall respond in writing within thirty (30) days of receipt of any comments on the Work Plan by the Department.
- 9). Naman shall begin implementation of the Work Plan as soon as reasonably possible after receipt of written approval of the Work Plan by the Department.
- 10). Naman shall inform the Department at least five (5) working days in advance of all field activities conducted pursuant to the Work Plan, and shall allow the Department, or its authorized representatives, to take duplicates of any samples if desired.
- 11). Naman shall preserve items on the Property that may: 1) provide evidence of a Potentially Responsible Party's involvement at the Site; 2) lead to the discovery of other areas of Contamination at the Site; or 3) contain environmental information related to the Site. Such items may include drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site. Naman shall notify the Department of the location of any such items, and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense prior to destruction of said items.

B. Report Logistics

- 1). Report(s) shall be prepared in accordance with accepted industry standards and shall be certified by signature and seal of a Professional Engineer or Professional Geologist duly licensed in South Carolina.

- 2). The Report(s) of assessment and/or corrective measures activities shall include a discussion of investigation methods and any deviations from the Department approved Work Plan. The Report shall also include tables and figures to summarize all data, a surveyed map documenting sampling locations, documentation of field observations including well core logs, sample descriptions, field screening results, and all laboratory analytical data.
- 3). All Report(s) shall be submitted to the Department in the form of one electronic copy of the entire Report on a compact disk (in .pdf format).

C. Assess Waste Materials and Segregated Sources:

- 1). Naman shall characterize for disposal any Waste Material and Segregated Sources that may be discovered on the Property at any time during assessment, corrective action, or development activities in accordance with applicable regulations.
- 2). Upon discovery of any Segregated Source that has not yet released all contents to the environment, Naman shall expeditiously stabilize or remove the Segregated Source from the Property.
- 3). Naman shall immediately notify the Department if a release of Contamination occurs as a result of its assessment, stabilization or removal actions. Naman shall assess the impact of the release and take necessary action in accordance with a Department approved plan.

D. Conduct a well survey:

- 1). Naman shall map all public and private wells used for drinking water supply within a one-half mile radius of the Property, and wells used for irrigation or other non-drinking water use within a one-quarter mile radius.
- 2). Naman shall report sufficient information to the Department to allow the Department to secure permission to sample the wells. At a minimum, this

information shall include the: 1) Location of the well; 2) Identity and mailing address of the well owner; and, 3) Telephone number, if publicly available or otherwise known to Naman, of the well owner or occupant of the residence served by the well.

E. Assess soil quality across the Property:

- 1). Naman shall collect and analyze a minimum of 16 soil samples from 8 locations on the Property. Naman shall collect one surface soil sample (0-1 foot below ground surface) and one subsurface soil sample (2 foot minimum depth) from each of the following locations:
 - a). Two soil samples from the narrower portion of the Property located on Gervais Street.
 - b). Two soil samples from the eastern portion of the larger tract located on Senate Street.
 - c). Two soil samples from the middle portion of the larger tract located on Senate Street.
 - d). Two soil samples from the western portion of the larger tract located on Senate Street.
- 2). Unless otherwise specified above, each surface soil sample shall be analyzed for TAL-Metals and SVOCs. Each subsurface sample shall be analyzed for TAL-Metals, VOCs and SVOCs. A minimum of 1 surface and 1 subsurface samples from a probable impacted area shall be analyzed for the full EPA-TAL and EPA-TCL.
- 3). Soil quality results shall be compared to the Residential and Industrial Screening Levels and to the applicable Protection of Groundwater SSL.

F. Assess groundwater quality:

- 1). Naman shall assess groundwater quality and flow direction across the Property. Assessment shall include samples from a minimum of 3 monitoring

wells. Specific locations shall be as follows:

- a). A location in the narrower portion of the Property located on Gervais Street.
 - b). A location on the eastern portion of the larger tract located on Senate Street.
 - c). A location on the western portion of the larger tract located on Senate Street.
- 2). Samples from all groundwater monitoring wells shall be analyzed for TAL-Metals, VOCs and SVOCs. In addition, 1 groundwater sample shall be analyzed for the full TAL/TCL parameters.
 - 3). Groundwater quality results shall be compared to the primary maximum contaminant level (MCL) standards in the South Carolina State Primary Drinking Water Regulations, R.61-58, or, if not specified in R.61-58, to the Regional Screening Tables values for "Tapwater."

G. Evaluate and control potential impacts to indoor air:

- 1). Naman shall evaluate potential impacts to indoor air if the Department determines significant concentrations of volatile organic compounds are present in the subsurface. The Department will use a modified Johnson and Ettinger Model to determine "Significant concentrations" based on representative soil and/or groundwater quality results reflective of the Property. The model will be constrained towards predicting commercial exposures consistent with the building construction proposed to be used on the Property.
- 2). This evaluation shall, unless otherwise agreed to by the Department, consist of collection and analysis of indoor air samples from within the building during two separate sampling events approximately six months apart. One sample shall be collected per every 1000 square feet of building footprint potentially subject to Vapor Intrusion. One sampling event shall be in the

winter. Each sampling event shall include collection of a representative number of indoor air samples for laboratory analysis of all site-related volatile organic constituents. The samples collected for laboratory analysis may use either active or passive collection methods provided the same protocol is used for both sampling events. The method shall be capable of detecting gas concentrations at screening levels indicative of a 10^{-6} risk. The applicable screening concentrations shall be based upon the EPA OSWER "Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils" or supplemental EPA guidance.

- 3). The Department may allow Naman to implement vapor intrusion control measures in lieu of the above evaluation, or use alternative evaluation methods that, in the Department's sole discretion, offer a similar degree of data usability.
- 4). Naman shall submit an addendum to the Work Plan detailing the steps for further study and/or remedial or other control management measures to be implemented if the measured indoor air concentration exceeds a 10^{-6} risk calculated for occupational exposure (40 hrs/wk, 50 wk/yr, 25 yrs). The Department shall give reasonable consideration of data or other demonstration that shows unacceptable exposures inside the building do not result from the subsurface conditions.

H. Institute reasonable Contamination control measures:

- 1). Naman shall stabilize or remove from the Property any Segregated Sources of Contamination that have not yet released all contents to the environment.
 - a). The contents of the Segregated Sources shall be properly reused or disposed of in accordance with regulations.
 - b). Naman shall document the characterization results and ultimate disposition of the materials to the Department within sixty (60) days of removal of any material from the Property.

- 2). Naman shall take reasonable measures to limit or prevent human exposure to Existing Contamination on the Property
- a). Corrective measures shall be required for Waste Materials and Contamination present in any media on the Property with concentrations in excess of appropriate human-health risk-based exposure standards with plausibly complete routes of exposure.
 - b). The corrective measures shall be proposed in a Corrective Measures Plan to be approved by the Department prior to implementation, and shall be consistent with the intended future use of the Property. Corrective measures may include removal, encapsulation, barriers, or other methods reasonably expected to limit human exposures to the Contamination.
 - c). Naman may request Department approval to conduct a site-specific risk assessment to determine levels of Contamination that are acceptable for the intended use of the Property. The risk assessment shall be conducted in accordance with EPA Risk Assessment Guidance for Superfund. Prior to conducting the risk assessment, Naman shall submit for Department approval, an overview of risk assessment assumptions including identification of contaminant exposure routes, the type and duration of possible exposures, the magnitude of exposure, and any data gaps that need to be addressed to complete the risk assessment.
 - d). Upon completion of any corrective measures, Naman shall provide a Corrective Measures Report to document satisfactory completion of the corrective measures for Department review and approval prior to obtaining a Certificate of Completion.
 - e). In the event that corrective measures include engineering controls that must be maintained or monitored during future use of the Property, a Site Management Plan may be required by the Department. If required, the Site Management Plan shall identify procedures for management of

contaminated media that may be encountered as a result of any disturbance of the engineering controls, and for repair or replacement of the engineering controls.

I. Monitor and/or abandon the monitoring wells:

- 1). Naman shall implement a groundwater-monitoring program if required by the Department. Continued monitoring requirements will be based on the Department's determination of potential adverse effects on nearby receptors, i.e., individuals that are presently or potentially exposed to Contamination.
- 2). The Department will determine the frequency and duration of the monitoring program on a case-specific basis.
- 3). Naman shall abandon the monitoring well(s) when the Department determines there are no further needs for wells. The wells shall be abandoned in accordance with R.61-71 of the South Carolina Well Standards.

HEALTH AND SAFETY PLAN

5. Naman shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan consistent with Occupational Safety and Health Administration regulations. The Health and Safety Plan shall be submitted to the Department in the form of one electronic copy on compact disk (in .pdf format). Naman agrees that the Health and Safety plan is submitted to the Department only for informational purposes. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by Naman.

PUBLIC PARTICIPATION

6. Naman and the Department will encourage public participation to implement this Contract as follows:

- A. The Department will provide notice, seek public comment, and initiate a thirty-day claim contribution notification period in accordance with established procedures consistent with S.C. Code Ann. §44-56-750 upon signature of this Contract by Naman.
- B. Naman shall erect a sign at major entrances onto the Property or other locations routinely accessible by the public. The sign(s) shall be erected no later than one day after the Department's public announcement about the Contract in a newspaper of general circulation in the community.
- 1). The sign will state "Voluntary Cleanup Project by Naman Gervais, LLC under Voluntary Cleanup Contract 15-6339-NRP with the South Carolina Department of Health and Environmental Control." The sign shall provide a brief description of the scope of activities under the Contract, and contact information, including telephone number and address, for a representative of Naman. Contact information for the Department shall state "TOLL-FREE TELEPHONE: 1-866-576-3432".
 - 2). All sign lettering must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the Property without intruding onto the Property.
 - 3). Naman shall submit photographs of the sign(s) and a Property drawing showing the location(s) of the signs. The photographs shall be submitted to the Department within 10 days of erecting the sign.
 - 4). Naman agrees to revise the sign if the Department determines the sign is inaccurate, not legible, or otherwise ineffectively placed.
 - 5). Naman shall maintain the sign(s) in legible condition and at visible locations throughout the duration of the Contract period until a Certificate of Completion is issued on the Property.
 - 6). The sign(s) may be removed to accommodate building or grading activities;

however, Naman shall restore the sign within two (2) days to its original location, or other publicly accessible location upon notice to the Department.

PROGRESS UPDATES

7. Naman shall submit periodic written updates to the Department's project manager until such time as all activities related to the Property are complete pursuant to this Contract. The first update shall be due within 90 days of the execution date of this Contract and semi-annually thereafter.

A. The updates may be in summary letter format, but should include information about:

- 1). The actions taken under this Contract during the previous reporting period;
- 2). Actions scheduled to be taken in the next reporting period;
- 3). Sampling, test results, and any other data in summary form, generated during the previous reporting period regardless of whether the data was collected pursuant to this Contract; and,
- 4). A description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

B. The Department's project manager may allow an extended schedule between updates based on case specific conditions.

SCHEDULE

8. Naman shall perform all activities and response actions pursuant to this Contract in an expeditious manner. In the event that circumstances cause a delay in implementation of the response actions, the Department may require implementation of interim measures to stabilize Contamination or prevent unacceptable exposures. Naman shall implement the interim measures in accordance with a Department-approved plan.

DECLARATION OF COVENANTS AND RESTRICTIONS

9. If hazardous substances in excess of residential standards exist at the Property after Naman has completed the actions required under this Contract, Naman shall enter and record a Declaration of Covenants and Restrictions (Declaration). If a Declaration is required, it shall provide for the least restrictive uses of the Property acceptable to the Department, including but not limited to permitting all possible uses except for ground floor residential, ground floor child care, ground floor elder care, and agricultural uses. If a Declaration is required, the recorded Declaration shall be incorporated into this Contract as an Appendix and shall be implemented as follows:
 - A. The Department shall prepare and sign the Declaration prior to providing it to Naman. An authorized representative of Naman or its Beneficiaries shall sign the Declaration within ten (10) days of receipt. All signatures shall be witnessed, and signed and sealed by a notary public.
 - B. Naman or its Beneficiaries shall record the executed Declaration with the Registrar of Deeds or Mesne Conveyance for the county where the Property is located.
 - C. Naman or its Beneficiaries shall provide a copy of the recorded Declaration to the Department within sixty (60) days of the Department's execution. The copy shall show the date and Book and Page number where the Declaration has been recorded.
 - D. In the event that Contamination exceeds levels acceptable for unrestricted use (Regional Screening Levels for residential use) on a portion of the Property, Naman or its Beneficiaries may create a new parcel of that portion of the property

that will be subject to the Declaration.

- E. The Declaration shall be noted on the master deed of any planned development for the Property and noted, or referenced thereafter, on each individual deed of property subdivided from the Property and subject to the Declaration.
- F. The Declaration shall reserve a right of entry and inspection for Naman or its Beneficiaries that may be transferred to another single individual or entity for purposes of compliance monitoring.
 - 1). Naman or its Beneficiaries shall ensure that the restrictions established by the Declaration remain on any subdivided property.
 - 2). Naman or its Beneficiaries shall create a procedure to provide a single point of contact responsible for documenting current land use and compliance with the Declaration regardless of the Property's ownership status. The procedure shall be reviewed and approved by the Department before it is implemented.
- G. The Declaration shall provide that the Department has an irrevocable right of access to the Property after Naman acquires the Property, and such right of access shall remain until remediation is accomplished for unrestricted use and monitoring is no longer required. Such access shall extend to the Department's authorized representatives and all persons performing response actions on the Property under the Department's oversight.
- H. Naman or its Beneficiaries, or the individual or entity responsible for compliance monitoring, shall annually document the Property's land use and compliance with the Declaration to the Department. The report shall be submitted by May 31st in a manner and form prescribed by the Department.

- I. The Department may amend the Declaration in response to changes in law, completion of remedial actions meeting the applicable standards in effect at the time, or if other circumstances of the Property change; however, said amendment shall not be applied retroactively unless expressly provided for in the legislation. An amendment may strengthen, relax, or remove restrictions based on the Regional Screening Tables in effect at that time; however, the Department shall not impose a more restrictive condition based solely on changes in the Regional Screening Tables. An amendment to the Declaration shall be duly executed and recorded using procedures similar to those detailed above.

NOTIFICATION

10. All notices required to be given by either party to the other shall be in writing. Each party shall have a continuing obligation to identify a contact person, whose name, address, and telephone number must be updated to the other party, throughout the term of the Contract. Notices by electronic mail or facsimile shall be acceptable if acknowledged in writing by the recipient; with the delivery date being the date of acknowledgment or earlier date if stated in the acknowledgment. All other forms of notice shall be deemed sufficiently given if delivered at the address shown below, or at such place or to such agent as the parties may from time to time designate in writing, by: 1) regular U.S. Mail by which notice shall be deemed to occur seven (7) days after the postmark date; 2) Certified or Registered Mail by which notice shall be deemed to occur on the date received as shown on the receipt; 3) Commercial delivery service company by which notice shall be deemed to occur on the date received as shown on the receipt; or, 4) hand delivery to the other party.

- A. All correspondence, notices, work plans, and reports shall be submitted to:

Alex Fulmer, P.E.

Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

- B. All correspondence and notices to Naman shall be submitted to Naman's designated contact person who as of the effective date of this Contract shall be:

Ashok Patel, Manager
Naman Gervais, LLC
P.O. Box 4540
Florence, South Carolina 29502

FINANCIAL REIMBURSEMENT

11. Naman or its Beneficiaries shall reimburse the Department for its public participation costs and for oversight costs of activities specific to this Contract as provided by S.C. Code Ann. §44-56-750 (D). The oversight costs shall include the direct and indirect costs incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract, and any future amendments thereto, and may include costs related to this Contract and incurred by the Department prior to execution of this Contract. Invoices for oversight costs will be sent to Naman on a quarterly basis. All costs are payable within thirty (30) days of the Department's invoice submitted to:

Ashok Patel, Manager
Naman Gervais, LLC
P.O. Box 4540
Florence, South Carolina 29502

- A. Failure to submit timely payment for costs upon receipt of the Department's

invoice is grounds for termination of the Contract pursuant to paragraph 16 herein.

- B. Payment for costs incurred by the Department pursuant to this Contract shall become immediately due upon termination of the Contract by any party pursuant to paragraph 16 herein.

ACCESS TO THE PROPERTY

- 12. Naman agrees the Department has an irrevocable right of access to the Property for environmental response matters after Naman acquires the Property. This right of access remains until such time as remediation is accomplished for unrestricted use and monitoring is no longer required, and shall extend to the Department's authorized representatives and all other persons performing response actions on the Property under the Department's oversight.

CERTIFICATE OF COMPLETION AND COVENANT NOT TO SUE

- 13. A Certificate of Completion shall be issued to Naman or its Beneficiaries for the Property under this Contract as follows:
 - A. Naman or its Beneficiaries shall request a Certificate of Completion pursuant to S.C. Code Ann. § 44-56-750(C)(1) after the response actions are completed and any required Declarations are recorded pursuant to this Contract. The request shall be in writing and shall report 1) the amount of soil that was removed or remediated on the Property; and 2) the cost of all environmental work conducted pursuant to this Contract.
 - B. Pursuant to S.C. Code Ann. § 44-56-750(C)(1) the Department shall issue the Certificate of Completion with its covenant not to sue upon determining that Naman or its Beneficiaries has successfully and completely complied with the

Contract and the voluntary cleanup approved under S.C. Code Ann. § 44-56-710 through 760 (as amended).

C. The Department may issue a Provisional Certificate of Completion if the substantive response actions required under this Contract are complete and a required Declaration has been recorded but all actions under this Contract have not been completed due to Property-specific circumstances.

- 1). A Provisional Certificate of Completion will include specific performance standards that Naman or its Beneficiaries shall continue to meet.
- 2). The Provisional Certificate of Completion may include the Department's covenant not to sue for Existing Contamination; however, said covenant shall be automatically revoked if Naman or its Beneficiaries do not satisfactorily complete the requirements of the Contract as stipulated in the Provisional Certificate of Completion.

ECONOMIC BENEFITS REPORTING

14. Naman or its Beneficiaries shall report information to the Department that demonstrates that the activities pursuant to this Contract have been beneficial to the State and community. The report shall be submitted within two (2) years after the execution date of this Contract, and annually thereafter until two (2) years after redevelopment of the Property is complete. Naman shall summarize the new operations at the Property, the number of jobs created, the amount of property taxes paid, and the total amount invested in the Property for property acquisition and capital improvements.

CONTRACT OBLIGATIONS AND PROTECTIONS INURE

15. The terms, conditions, obligations and protections of this Contract apply to and inure to the benefit of the Department, Naman, and its Beneficiaries as set forth below. The following stipulations apply to ensure the transition of all obligations and

protections to successive Beneficiaries for any portion of the Property:

- A. Naman or its Beneficiaries shall provide a copy of this Contract and applicable Appendices to any subsequent Beneficiary. Transmittal of the Contract copy may be via any commonly accepted mechanism.

- B. If the Certificate of Completion has not been issued, Naman or its Beneficiaries shall request approval from the Department prior to transferring the obligations and protections of this Contract to a new person or entity. The Department shall not unreasonably withhold its approval upon receipt of a Non-Responsible Party Application for Voluntary Cleanup Contract documenting that the new person or entity:
 - 1). Is not a Responsible Party for the Site;
 - 2). Has sufficient resources to complete the activities of this Contract;
 - 3). Will not use the Property for activities that are inconsistent with the terms and conditions of this Contract,
 - 4). Will assume the protections and all obligations of this Contract and,
 - 5). Will, in the Department's sole discretion, provide a measurable benefit to the State and the community as a result of this transfer.

- C. If the Certificate of Completion has been issued and the portion of the Property is subject to a Declaration or other ongoing obligation pursuant to this Contract, Naman or its Beneficiaries shall provide written notification to the Department identifying the new individual or entity within thirty days after the effective date of the ownership change or other possessory transfer of the Property.
 - 1). The notification shall include a signed statement from the new individual or entity that its use of the Property will remain consistent with the terms of the Contract and the Declaration, and that it will assume the ongoing obligations

and protections of this Contract.

- 2). This requirement is waived for an individual or entity acquiring a portion of the Property for individual residential or commercial use provided the Declaration is noted on the master deed for the planned development, and the Department has approved the procedure for a single point of contact responsible for documenting current land use and compliance with the Covenant.

CONTRACT TERMINATION

16. Naman, its Beneficiaries, and the Department each reserve the right to unilaterally terminate this Contract by giving thirty days advance written notice to the other party. Termination shall be subject to the following:

A. The Department may not terminate this Contract without cause and before termination, shall provide Naman or its Beneficiaries an opportunity to correct the cause(s) for termination, which may include, but is not limited to, the following:

- 1). Failure to complete the terms and conditions of this Contract;
- 2). Change in Naman's or its Beneficiaries' business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract;
- 3). Failure to submit timely payment for costs upon receipt of the Department's invoice;
- 4). Failure of Naman or its Beneficiaries to implement appropriate response actions for additional Contamination or releases caused by Naman or its Beneficiaries;
- 5). Knowingly providing the Department with false or incomplete information or knowing failure to disclose material information;
- 6). Failure by Naman or its Beneficiaries to obtain the applicable permits from the Department for the response actions or other activities undertaken at the

Property pursuant to this Contract; or,

- 7). Failure by Naman or its Beneficiaries to make material progress toward the expansion, redevelopment, or reuse of the property as determined by the Department upon consideration of Naman's or its Beneficiaries' marketing efforts, regional economic conditions, and other pertinent information on the Property.
- B. Should Naman or its Beneficiaries elect to terminate, that party shall certify to the Department's satisfaction that any environmental or physical hazards caused or contributed by Naman or its Beneficiaries have been stabilized or mitigated such that the Property does not pose hazards to human health or the environment.
- C. Termination of this Contract by any party does not waive the Department's authority to require response action under any applicable state or federal law.
- D. Termination of this Contract by any party does not end the obligations of Naman or its Beneficiaries to pay costs incurred by the Department pursuant to this Contract. Payment for such costs shall become immediately due.
- E. Upon termination, the protections provided under this Contract shall be null and void as to any party who participated in actions giving rise to termination of the Contract. Revocation of protections shall also apply to that party's lenders, parents, subsidiaries, and successors, including lessees, heirs, devisees, and other parties taking an interest in the Property through that party who participated in actions giving rise to termination of the contract. The protections will continue for any party who has received protections through a Certificate of Completion for this Contract, and who did not participate in the actions giving rise to the termination.

ENTITLEMENT OF PROTECTIONS AND BENEFITS

17. Naman and its Beneficiaries are entitled to the protections and benefits in regard to Existing Contamination provided by South Carolina statutes as follows:

A. Effective on the date this Contract is first executed by the Department:

- 1). Protection from contribution claims under CERCLA Section 113.42 U.S.C. § 9613 and § 44-56-200, et seq.
- 2). Protection from third-party claims as provided by S.C. Code Ann. § 44-56-750(H).
- 3). Eligibility to file annual application for Voluntary Cleanup Activity Tax Credits pursuant to S.C Code § 12-6-3550.

B. Effective on the date the Certificate of Completion is issued by the Department.

- 1). The Department's covenant not to sue Naman and its Beneficiaries for Existing Contamination but not for any Contamination, releases and consequences caused or contributed by Naman or its Beneficiaries.
- 2). Specific tax credits or additional benefits expressly contingent in South Carolina statutes on issuance of the Certificate of Completion.

C. These Protections and Benefits do not apply to any Contamination, releases, and consequences caused or contributed by Naman or its Beneficiaries. The Department retains all rights under State and Federal laws to compel Naman and its Beneficiaries to perform or pay for response activity for any Contamination, releases and consequences caused or contributed by Naman or its Beneficiaries.

RESERVATION OF RIGHTS BY THE DEPARTMENT

18. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the

Department may have against any person, firm, or corporation other than Naman and its Beneficiaries. The Department reserves the right to undertake future response actions at the Site and to seek to compel parties, other than Naman and its Beneficiaries, to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

RESERVATION OF RIGHTS BY NAMAN

19. Naman retains all rights to assert claims in law or equity against any person, company, or entity with respect to the Property, except as limited elsewhere by this Contract. Naman and its Beneficiaries specifically deny responsibility for response costs or damages resulting from Existing Contamination except for Contamination, releases, and consequences they cause or contribute. However, Naman and its Beneficiaries agree to undertake the requirements of this Contract.

BURDEN OF PROOF

20. Naman and its Beneficiaries shall have the continuing obligation to demonstrate that any newly discovered Contamination is not caused or contributed by Naman or its Beneficiaries. Naman and its Beneficiaries shall make this demonstration to the Department's satisfaction in accordance with State or Federal Law applicable to such newly discovered Contamination. For purposes of this clause, newly discovered Contamination means finding types of Contamination not previously identified at the Property or substantially higher concentrations of Existing Contamination.

LIMITATION OF CLAIMS BY NAMAN AND ITS BENEFICIARIES

21. In consideration of the protections from the Department under this Contract, Naman and its Beneficiaries agree not to assert any claims or causes of action against the

Department or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Property pursuant to this Contract. This limitation shall not extend to any claims or causes of action resulting from the Department's intentional or negligent acts or omissions, or the Department's willful breach of this Contract.

[Remainder of page left blank]

SIGNATORS

22. The signatories below hereby represent that they are authorized to and do enter into this Contract on behalf of their respective parties.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL**

BY:

DATE:

Daphne G. Neel, Chief
Bureau of Land and Waste
Management

DATE:

Reviewed by Office of General Counsel

NAMAN GERVAIS, LLC

BY:

DATE:



ASHOK PATEL MANAGER

Printed Name and Title

08/13/15

APPENDIX A

Naman Gervais, LLC

Application for Non-Responsible Party Voluntary Cleanup Contract

April 21, 2015